



**Report of the
House of Representatives
Special Committee on Election Contests**

March 22, 2023

Dean Plocher, Speaker
Missouri House of Representatives
State Capitol Building
Room 308
Jefferson City, MO 65101

Mr. Speaker,

The House of Representatives Special Committee on Election Contests has met, taken testimony, deliberated, and concluded its review of the 2022 Missouri District 105 General Election.

The below listed members are pleased to submit the attached report:



Chair, Representative Dan Stacy



Vice-Chair, Representative Mike Henderson



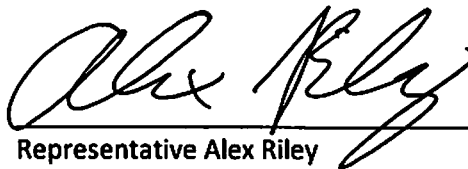
Ranking Minority Member,
Representative Kimberly-Ann Collins




Representative Rick Francis



Representative Peggy McGaugh



Representative Alex Riley



Representative Mark Sharp

HEC 1

On January 5, 2023, a petition was filed with the Chief Clerk of the Missouri House of Representatives requesting a recount of the votes cast during the 2022 Missouri House District 105 General Election. This petition, HEC 1, alleges the following in support of its request for a recount:

- Contestee Schwadron received 5,404 votes.
- Contestant Berne received 5,305 votes.
- This 99 vote difference constituted 0.9% of the total votes cast.
- Pursuant to RSMo 115.563, all contested elections for the office of state representative shall be heard and determined by the state house of representatives.
- Pursuant to RSMo 115.601, candidates defeated by less than one percent of the votes cast shall have a right to a recount.

Contestant's petition does not allege any irregularity or impropriety on the part of any election official in the conduct of this election. Contestant's petition does not challenge the validity of any vote cast or counted in this election. Contestant's only request is for a recount based on the number of votes that decided the election.

Activities of the Special Committee

- On January 11, 2023, the Speaker established the Special Committee on Election Contests and appointed Representative Dan Stacy as Chair and Representative Mike Henderson as Vice-Chair. Representatives Kimberly-Ann Collins, Rick Francis, Peggy McGaugh, Alex Riley, and Mark Sharp were appointed as members of the committee. HEC 1 was referred to the Special Committee on Election Contests on January 11, 2023.
- On February 9, 2023 the committee heard testimony from Kurt Bahr, the Saint Charles County Director of Elections.
- On February 22, 2023 the committee heard testimony from Chrissy Peters, the Director of Elections in the Missouri Secretary of State's office.
- On March 1, 2023 the committee heard testimony from contestant Berne's legal counsel, Matt Vianello, and contestee Schwadron's legal counsel, Lowell Pearson.

Notice of Requested Relief

During the March 1, 2023 hearing of the Special Committee on Election Contests, the chair indicated that the committee required more information from the contestant in order to make a determination on the appropriateness of a recount. The contestant and her counsel responded by providing the chair with a notice of requested relief. The notice indicates the following:

- Contestant requests a hand recount of all votes cast in the 2022 general election for Missouri House District 105 in which questions of voter intent arise during the recount.
- Contestant requests a hand recount of all absentee ballots cast, whether counted or not.
- Contestant requests a hand recount of all provisional ballots cast, whether counted or not.
- Contestant requests a review of all affidavits submitted by voters in connection with their attempt to vote.
- Contestant requests a machine recount of all ballots in which a voter's intent is not at issue.

- Contestant requests the Special Committee appoint the relevant persons necessary to perform the recount.

Findings of the Committee

A review of public testimony delivered to the committee found the following:

- Longstanding employees of the Saint Charles County Election Authority are aware of no instance in which a recount changed the outcome of an election.
- In every manual recount performed by Director Bahr since he entered his post at the Saint Charles County Election Authority in January 2019, the result of the recount has matched that of the election.
- Director Bahr already performed a recount of one of the precincts from this race as part of his office's audit of the 2022 general election. The results of the audit matched the results reported after the election.
- Since 2000, the Secretary of State's office has performed 24 recounts. Not one recount performed in this 23 year period has reversed the result of an election.

A review of recent House actions on election contests found the following:

- Since 1997, three requests for recount have been made to the House of Representatives.
- In 1997, contestant Michael Frame petitioned the House for a recount of the 1996 general election for Missouri House District 105. Contestee Marilyn Edwards won the election by a margin of 15 votes. The House ordered a recount, the results of which confirmed the results of the election, by a margin of 14 votes.
- In 2000, Bobbie J Campbell lost the general election for Missouri House District 41 to Melba J. Curls. The Reform Party requested a recount. Finding that the party had no standing to make this request, the committee voted unanimously to take no action on the petition.
- In 2011, contestants Sean O'Toole and Will Royster petitioned the House for a recount of the 2010 primary election results for Missouri House District 40. Contestee John Rizzo won his primary by a single vote. The committee took no action on the petition.

A review of relevant statutes and constitutional provisions found the following:

- Article III Section 18 of the Missouri Constitution makes each house of the General Assembly the sole judge of qualifications, election and returns of its own members.
- Article VII Section 5 of the Missouri Constitution gives the General Assembly the power to determine what governmental body shall try the different types of election contests.
- Provisions for election contests are established in RSMo 115.526-115.601.
- Pursuant to RSMo 115.563, all contested elections for the office of state representative shall be heard and determined by the House of Representatives.
- Pursuant to 115.573, the determination made by the House of Representatives on a contested election shall be final and not subject to court review.
- Pursuant to RSMo 115.583, if the court or legislative body hearing a contest finds that there is a *prima facie* showing of irregularities which place the result of any contested election in doubt, the court or legislative body shall order a recount of all votes brought in question by the petition or its answer.

- The process of conducting a recount, if ordered by the court or legislative body, is established in RSMo 115.585.
- “Recount,” for the purposes of RSMo 115.601, means “one additional counting of all votes counted for the office or on the question with respect to which the recount is requested”.

Conclusions of the Special Committee on Election Contests

- On March 22, 2023, the committee met and concluded that there was not a *prima facie* showing of irregularities which place the result of the contested election administered by the Saint Charles County Election Authority in doubt, and that no recount is warranted.
- Therefore, the Special Committee on Election Contests recommends that the House of Representatives does not order a recount of the 2022 Missouri House District 105 General Election.

On March 22, 2023, the Special Committee on Election Contests adopted the above report by the following vote:

Ayes: (4) Stacy, Henderson, McGaugh, Riley

Noes: (2) Collins, Sharp

Present: (0)

Absent: (1) Francis